

DOCKET FILE COPY ORIGINAL

RECEIVED

JUN 20 1994

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)
)
)
Implementation of Sections 3(n) and 332) GN Docket No. 93-252
)
of the Communications Act, Regulatory)
)
Treatment of Mobile Services)

To: The Commission

**COMMENTS OF DIAL PAGE, INC.
ON FURTHER NOTICE OF PROPOSED RULE MAKING**

Dial Page, Inc. ("Dial Page"), by its attorneys and pursuant to Rule Section 1.415, submits its comments in response to the Commission's Further Notice of Proposed Rule Making in the above-captioned proceeding.¹

1. Dial Page is a Delaware corporation which itself and through various subsidiaries provides Public Land Mobile Service ("PLMS"), Private Carrier Paging Service ("PCP"), and Specialized Mobile Radio Service ("SMR") throughout the southern United States. Dial Page, through Dial Call, Inc. and related subsidiaries, has recently made a substantial investment in SMR service and has announced plans to establish an enhanced SMR system ("ESMR") throughout the southern United States. Dial Page

¹ See Regulatory Treatment of Mobile Services, FCC 94-100, 59 Fed. Reg. ____ (May 20, 1994) ("Further Notice").

expects this system to compete with the established cellular duopolies in the region as well as with providers of the recently-authorized Personal Communications Service ("PCS") and other services based on developing technologies.

2. Dial Page generally supports the Commission's efforts to provide consistent regulatory treatment of current and future commercial mobile radio service ("CMRS") providers and to promote future competition and economic growth. However, modifications to the Commission's rules must take into account the competitive disadvantages of ESMR providers previously noted by the Commission², and the economic realities of the provision of ESMR services. Specifically, Dial Page urges the Commission to:

- reject any overall CMRS spectrum cap.
- reject any cap which directly or indirectly limits aggregations of ESMR spectrum.
- exclude PLMS and PCP services from any overall cap.
- adopt a less restrictive attribution rule for any CMRS spectrum cap.
- delay the adoption of any changes to the SMR licensing scheme (such as block licensing) until the ESMR industry is able to develop and submit its own licensing blueprint.

² See Implementation of Sections 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services, GN Docket No. 93-252, 9 FCC Rcd 1411, 1467-72 (1994) (Second Report and Order) [hereinafter *Second Report and Order*].

3. Overall Spectrum Cap. Dial Page strongly opposes any proposal to establish any limitation on the aggregation of CMRS spectrum. A general overall cap is neither necessary nor desirable.

The Commission's current regulations adequately address the Commission's concern regarding the aggregation of large amounts of CMRS spectrum in a given geographic area. Rule Section 22.901(b)(5) proscribes substantial cross ownership of competing cellular systems. The Commission has also adopted a licensing scheme for PCS which proscribes substantial interests of more than 40 MHz of PCS spectrum to any one party, and which generally limits interests of cellular licensees to 10 MHz of PCS spectrum per BTA in which the cellular licensee operates.³ These limitations assure a minimum of five wideband CMRS providers with at least 25 MHz each in every market.

The allocated SMR spectrum totals only 14 MHz (with the possibility of some additional spectrum from the intercategory pool). Although some ESMR operators have amassed substantial amounts of frequency at great effort and expense, their spectrum falls far short of the 25 MHz allocated to each cellular operator. Moreover, ESMR spectrum is neither contiguous nor exclusive within the ESMR operator's service area and is subject to site by site licensing. The result is that ESMR providers

³ See Personal Communications Service, 9 FCC Rcd ___, FCC 94-144 at para. 67 (June 13, 1994). After January 1, 2000, a cellular operator could obtain an additional five MHz of PCS spectrum. Id.

attempting to compete with established cellular operators and soon to be authorized PCS licensees have a very substantial spectrum disadvantage. Given the amount and characteristics of SMR spectrum, we believe there is no reason to limit the aggregation of CMRS spectrum with respect to SMR.

4. Imposition of a general spectrum cap in combination with the attribution rule is likely to inhibit investment in innovative services such as ESMR. Enormous sums will be required to providers to acquire CMRS spectrum and to finance and develop CMRS services. Available sources of funding for such endeavors are limited. Those entities which already have an existing interest in other mobile communications services are most likely to participate in funding an innovative communications system. There is no reason to foreclose the possibility of that investment.

5. No ESMR Cap. If the Commission decides to implement an overall CMRS spectrum cap, the cap should not directly or indirectly (by limiting the ability and incentive of entities to invest in both PCS and ESMR companies) limit the aggregation of SMR spectrum. ESMR operators need to accumulate significant spectrum positions (1) to achieve critical economies of scale to provide cost-effective mobile telephone services competitive with cellular and PCS, (2) to accommodate high-speed data transfer applications and other ancillary services, and (3) to reduce the costs of constructing their digital networks (in particular, the costs of cell construction). For these reasons, Dial Page

opposes any cap on SMR spectrum aggregation. Nor should the Commission count previously private radio spectrum (such as SMR), which will be reclassified as CMRS, in any overall CMRS spectrum cap. As noted above, this spectrum is not equivalent to the blocks of spectrum which have been allocated to the cellular and PCS services. Counting that spectrum as equivalent to cellular or PCS spectrum is factually erroneous, unfair to the ESMR providers, and ultimately promises to harm the public by eviscerating the ability of ESMR operators to compete as wideband wireless providers. Thus, should the Commission elect to adopt a spectrum cap, it should not include previously private radio spectrum unless and until it can be shown that such spectrum is equivalent to cellular and PCS spectrum.⁴

6. Attribution. Dial Page believes that a five percent attribution rule as suggested by the Commission is unnecessarily restrictive. Many CMRS providers have multiple investors holding 5% or more of their stock. As a general matter, these holders do not, and do not have the power to, control the entities in which they have invested. The proposed attribution rule would limit investment by these entities in new entities without providing

⁴ Such a resolution of the spectrum cap issue is in keeping with Congress's grant to existing private radio licenses which would be reclassified as CMRS providers a three year transition period to be accorded treatment on par with existing common carrier licensees. Applying that intent here, existing private radio licensees should be exempt from any spectrum caps until August 10, 1996, at which time if they hold spectrum which is equivalent to cellular and PCS spectrum, and if the Commission establishes a record which demonstrates that such a cap is necessary, the Commission could begin prospectively to apply such a spectrum cap.

any articulated benefit. Venture capital and other strategic investors which have been willing to invest in emerging CMRS businesses have been those investors familiar with the area. Because of the enormous investment required to develop ESMR, PCS and other emerging services, any artificial limit resulting from attribution could seriously limit financing sources and ultimately competition. Dial Page notes that the recently revised PCS rules have attribution levels for cellular providers of 20%.

7. Exclusion of Paging. If the Commission adopts any overall spectrum cap, the Commission should clarify that frequencies used solely for paging services are not included in any such spectrum cap. Although many CMRS services such as cellular, SMR and PCS are expected to offer paging and short messaging as ancillary services and therefore will provide competition to paging, paging is not competitive with the mobile phone and other services offered by these services. Accordingly, paging should not be considered "substantially similar" to cellular SMR and PCS for purposes of any spectrum cap.

8. Delay Adoption of ESMR Block Licensing Scheme. Dial Page endorses in principal many of the Commission's suggestions relating in the licensing of spectrum for ESMR systems. However, Dial Page requests that the Commission defer adopting any new scheme for ESMR licensing until the industry is able to develop its own licensing blueprint.

Respectfully submitted,

DIAL PAGE, INC.

By: 

Gerald S. McGowan
George L. Lyon, Jr.
Its Attorneys

Lukas, McGowan, Nace & Gutierrez,
Chartered
1819 H Street, N.W., 7th Floor
Washington, D.C. 20006
(202) 857-3500
June 20, 1994